

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROYAL PARK INVESTMENTS SA/NV,
individually and on behalf of all
others similarly situated,

Plaintiff,

- against -

U.S. BANK NATIONAL ASSOCIATION,
as Trustee,

Defendant.

JAMES C. FRANCIS IV
UNITED STATES MAGISTRATE JUDGE

14 Civ. 2590 (VM) (JCF)

MEMORANDUM
AND ORDER

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The plaintiff, Royal Park Investments SA/NV ("Royal Park"), has submitted a letter motion seeking to quash notices of deposition for Stefaan De Doncker, Rafael Martinez, and Fabrice Susini. (Letter of Darryl J. Alvarado dated Jan. 3, 2017). In opposing the motion, the defendant, U.S. Bank National Association ("U.S. Bank"), argues that Royal Park is obligated to produce "assignor witnesses," that is, witnesses who were employed by Fortis Bank SA/NV or its successor, BNP Paribas Fortis SA/NV ("BNPPF"). U.S. Bank cites my prior opinion in this case, Royal Park Investments SA/NV v. U.S. Bank National Association, ___ F.R.D. ___, 2016 WL 6705773 (S.D.N.Y. 2016), which in turn relied on Royal Park Investments SA/NV v. Deutsche Bank National Trust Co., 314 F.R.D. 341 (S.D.N.Y. 2016), and J.P. Morgan Chase Bank v. Winnick, 228 F.R.D. 505 (S.D.N.Y. 2005) ("Winnick I"), for the proposition

that "the assignee of a claim in litigation has a duty to obtain and produce the same documents and information to which the opposing parties would have been entitled had the assignors brought the claim themselves." Deutsche Bank, 314 F.R.D. at 344. U.S. Bank is correct that this principle is equally applicable to witnesses as it is to documents. See Winnick I, 228 F.R.D. at 508 (noting assignee's obligation to, among other things, "produce witnesses for deposition" from assignors). (Letter of Benjamin P. Smith dated Jan. 6, 2017 at 3 n.1). Just as Royal Park could have secured the cooperation of the assignors in producing documents when it negotiated the assignment, so it could have secured an agreement to produce witnesses.

This proposition does not apply, however, to Mr. Susini, who, according to Royal Park, "has never been employed by any Fortis entity." (Letter of Darryl J. Alvarado dated Jan. 10, 2017 ("Alvarado 1/10/17 Letter") at 2 n.4). Royal Park also argues that it does not apply to Mr. De Doncker and Mr. Martinez because they are non-parties to this litigation, and the court in a subsequent order in the Winnick case "den[ied] a motion to compel assignors to produce documents" because these assignors were non-parties. (Alvarado 1/10/17 Letter at 2 n.4 (citing J.P. Morgan Chase Bank v. Winnick, No. 03 Civ. 8535, 2006 WL 278192, at *2 (S.D.N.Y. Feb. 6, 2006) ("Winnick II")). Royal Park misreads Winnick II. In that case, the court held only that, as a non-

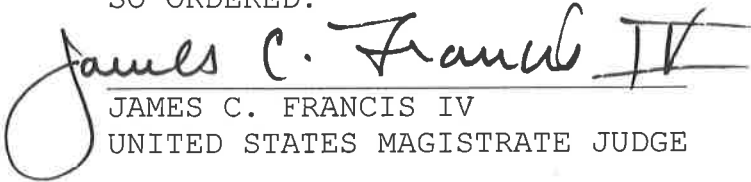
party, the assignor, against whom discovery was sought directly, was entitled to the heightened protection afforded by Rule 45 of the Federal Rules of Civil Procedure. 2006 WL 278192, at *2. At the same time, the court warned that if the assignee could not produce relevant information because it was exclusively in the possession of the assignors, and if the defendants could show prejudice, the defendants could be entitled to sanctions. Id. at *3. Here, U.S. Bank has not sought discovery directly from BPPNF or its employees, but rather from Royal Park. Thus, the principles of Winnick I apply with full force.

At the same time, Royal Park makes a compelling argument that discovery should first be taken from Danny Frans and Koen Weemaes -- cooperative witnesses who likely possess substantially greater information -- before requiring Royal Park to produce more marginal and potentially uncooperative deponents. Accordingly, the deposition notices for Stefaan De Doncker and Rafael Martinez are quashed for the time being.

Conclusion

For the foregoing reasons, Royal Park's application is granted, and the notices of deposition for Fabrice Susini, Stefaan De Doncker, and Rafael Martinez are quashed without prejudice to reinstituting the latter two after the depositions of Danny Frans and Koen Weemaes have been completed.

SO ORDERED.


JAMES C. FRANCIS IV
UNITED STATES MAGISTRATE JUDGE

Dated: New York, New York
January 25, 2017

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